



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO O-N Minerals (Chemstone) Company Registration Number: 80252

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and O-N Minerals Company, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "O-N Minerals" means O-N Minerals (Chemstone) Company, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means O-N Minerals' limestone crushing and processing facility located at 1696 Oranda Road, Strasburg, Shenandoah County, Virginia 22657.

8. “VRO” means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. “Permit” means O-N Minerals’ Virginia Title V Operating Permit, dated July 30, 2002.
10. “Regulations” mean the Regulations for the Control and Abatement of Air Pollution, located in the Virginia Administrative Code (“VAC”), 9 VAC 5-10-10 *et seq.*
11. “Virginia Air Pollution Control Law” means the laws located in the Virginia Code (“Va. Code”) (1950), as amended, Va. Code § 10.1-1300 *et seq.*

**SECTION C: Findings of Facts and Conclusions of Law**

1. O-N Minerals is the owner and operator of the Facility. This Facility is the subject of the July 30, 2002 Title V Permit, (expired).
2. The owner submitted a Title V permit application on January 30, 2007, and the application is currently being reviewed by DEQ staff. Additional information has been requested from the owner by DEQ staff.
3. In accordance with Condition V.D.2. of the Permit, O-N Minerals conducted a performance test for particulate matter (PM) on the hydrator (U10) using EPA Method 5 (40 CFR Part 60, Appendix A). The first test for Filterable PM Emissions was conducted on June 13, 2007. The Emission Test Report was submitted to VRO staff on August 13, 2007, and indicated a result of 2.45 lb/hr PM.
3. After maintenance was performed on the hydrator (U10), a second test for Filterable PM Emissions was conducted on January 17, 2008. The Emission Test Report was submitted to VRO staff on February 7, 2008, 218 days after the first test, and indicated a result of 1.85 lb/hr PM.
4. After the second test, adjustments were made to the hydrator (U10) and a third test for Filterable PM Emissions was conducted on September 12, 2008. The Emission Test Report was submitted to VRO staff on October 15, 2008, 238 days after the second test, and indicated a result of 0.67 lb/hr PM.
5. Condition V.A.3. of the Permit states that particulate emissions from the operation of the atmosphere hydrator (U10) shall not exceed the following limitations: 1.0 lb/hr and 4.4 tons/yr. Annual emissions shall be calculated monthly as the sum of each consecutive 12 month period. (9 VAC 5-80-110 and Part I, Condition 5 of 5/5/87 Permit). The three Emission test reports noted in paragraphs 2, 3 and 4 above confirm that the permitted PM emission limit was exceeded, at minimum, from June 13, 2007, through September 12, 2008.
6. Based on the emission test results submitted, DEQ staff issued a Notice of Violation to O-N Minerals on January 29, 2009.

7. O-N Minerals and VRO staff met on multiple occasions throughout 2007 and 2008 to discuss the test results, acceptable testing protocols and corrective actions to assist the Facility in returning to compliance with the Permit. They met again on March 23, 2009 to discuss resolution of the 2009 NOV. O-N Minerals staff requested inclusion of a Supplemental Environmental Project (SEP) in the Order.
8. On April 27, 2009, DEQ staff received and reviewed O-N Minerals SEP proposal. Additional information regarding this SEP was submitted by the owner May 27, 2009. DEQ staff informed the owner on June 1, 2009, that the proposed SEP did not qualify.
9. On June 9, 2009, DEQ staff received and reviewed a second SEP proposal. DEQ staff informed the owner on June 25, 2009, that the proposed SEP was acceptable for inclusion into this Order.
10. On August 11, 2009, O-N Minerals withdrew its SEP proposal and requested that this Order include only the civil charge as stated in Section D.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§10.1-1307 D, 10.1-1309, 10.1-1184, 10.1-1316 C., and 10.1-1186.2 orders O-N Minerals, and O-N Minerals agrees, to pay a civil charge of \$29,013.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
PO Box 1104  
Richmond, Virginia 23218

O-N Minerals shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this paragraph.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of O-N Minerals, for good cause shown by O-N Minerals, or on its own motion after notice to O-N Minerals and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein including those matters addressed in the Notice of Violation issued to O-N Minerals on January 29, 2009. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not preclude

appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order only, O-N Minerals admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. O-N Minerals consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. O-N Minerals declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right of O-N Minerals to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by O-N Minerals to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. O-N Minerals shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. O-N Minerals shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. O-N Minerals shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. The reasons for the delay or noncompliance;
  - b. The projected duration of any such delay or noncompliance;
  - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which O-N Minerals intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and O-N Minerals. Notwithstanding the foregoing, O-N Minerals agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to O-N Minerals. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve O-N Minerals, from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By appropriate signature below, O-N Minerals voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2<sup>nd</sup> day of September, 2009.

Amy Thatcher Owens

Amy Thatcher Owens, Regional Director  
Valley Regional Office  
Department of Environmental Quality

O-N Minerals voluntarily agrees to the issuance of this Order.

By: K - J. Whyte

Kevin Whyte  
Vice President, General Counsel

Date: August 26, 2009

Commonwealth of Pennsylvania

City/County of Allegheny

The foregoing document was signed and acknowledged before me this 26<sup>th</sup> day of August, 2009, by Kevin J. Whyte, who is  
(name)

General  
Vice President, Counsel of O-N Minerals, on behalf of O-N Minerals.  
(title)

Karen Little

Notary Public

My commission expires: April 13, 2012

